

## REMARKS

The Final Office Action mailed February 11, 2008, has been received and reviewed. New claims 24 and 25 have been added. Claims 1-25 are currently pending in the application. Claim 23 was allowed. Claims 1-22 stand rejected. Applicant has amended claims 1, 8, 9, 12, 14, 19 and 21 and respectfully requests reconsideration of the application as amended herein. New claims 24 and 25 have been added. Support for new claims 24 and 25 is found in at least paragraphs [1044-46] of Applicant's as-filed specification. No new matter has been added.

### 35 U.S.C. § 103(a) Obviousness Rejections

#### Obviousness Rejection Based on NPL XP-001017264 and EP 0658014

Claims 1-4, 6-10, 12-16 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over NPL XP-001017264 to Siwko ("Siwko") in view of European Patent Applicant No. EP 0658014 to Redden *et al.* ("Redden").

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-4, 6-10, 12-16 and 18-20 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically,

the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Regarding independent claim 1 and claims 2-4, 6 and 7 depending therefrom, independent claim 8 and claims 9, 10, 12 and 13 depending therefrom, independent claim 14 and claims 15, 16 and 18 depending therefrom, and independent claim 19 and claim 20 depending therefrom, Applicant has amended independent claims 1, 8, 14 and 19 to include claim limitations not taught or suggested in the cited references.

Generally, Applicant's invention recites "receiving" and "adjusting" "an initial call request block probability" **all at the same entity**, namely at the "mobile station" or "apparatus". Specifically, Applicant's amended independent claims 1, 8, 14 and 19 each recite, in part, "receiving at a mobile station/an apparatus an initial call request block probability ...and adjusting at the mobile station/the apparatus said initial call request block probability based on said elapsed time".

In contrast, neither Siwko nor Redden teach or suggest giving *adjustment* control to a mobile station. Generally, Siwko teaches of mobile stations freely generating unrestrained call requests and then the network access controller chooses which ones to admit or reject. Specifically, the Office Action states:

Siwko discloses ... *receiving an initial* call dropping probability factor in a calculation to determine call admission or blocking, wherein *the probability is determined by a network element*; ... *adjusting said initial* call request block probability based on said elapsed time .... (Office Action, p. 4; emphasis added).

Furthermore, Siwko teaches:

Connection *requests [from the mobile station] arrive at the system* ... [and] [a] CAC policy decides whether a connection request is to be admitted or rejected. Connections whose requests are rejected by the CAC policy are said to be blocked and are lost. (Siwko, Section II, para. 3, lines 4-8; emphasis added).

According to Siwko, all of the "receiving" and "adjusting" occur at the network element and **not** at the "the mobile station/the apparatus" as claimed by Applicant.

Regarding Redden, the Office Action states:

Redden discloses *receiving at a mobile station and an initial call request block probability* .... (Office Action, p. 4; emphasis added).

Furthermore, Redden teaches:

FIG. 9 illustrates procedure 300 *performed by* a communication node (for example, *satellite* 12 of FIG. 1) ..., the communication node [e.g., satellite] receives a parameter set from the communication system ... task 304 [performed in the satellite] modifies the parameter set ...[t]ask 314 [satellite] broadcasts the parameter set on at least one of the broadcast channels .... (Redden, p. 14, lines 4-19; emphasis added).

According to Redden, all of the “receiving” happens at either the satellite or at the mobile stations after the modifications have occurred while all of the “adjusting” happens either in the “communication node (e.g., satellite)” or the “communication system” but Redden teaches of no “adjusting” occurring in the “the mobile station/the apparatus” as claimed by Applicant.

Therefore, since *Siwko teaches* all of the “receiving” and “adjusting” occur at the *network element* and since *Redden teaches that no “adjusting” occurs in the “the mobile station/the apparatus”*, these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. § 103, Applicant’s invention as presently claimed in Applicant’s amended independent claims 1, 8, 14 and 19 which each recite, in part, “receiving at a mobile station/an apparatus an initial call request block probability ...and adjusting at the mobile station/the apparatus said initial call request block probability based on said elapsed time”. Accordingly, Applicant respectfully requests the rejection of presently amended independent claims 1, 8, 14 and 19 be withdrawn.

The nonobviousness of independent claims 1, 8, 14 and 19 preclude rejection of claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8, 14 and 19 and claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom.

Obviousness Rejection Based on NPL XP-001017264 and EP 0658014 and U.S. Patent No. 4,493,102

Claims 5, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Siwko in view of Redden and further in view of U.S. Patent No. 4,493,102 to Weishaupt (“Weishaupt”).

The nonobviousness of independent claims 1, 8 and 14 preclude rejection of claims 5, 11 and 17 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8 and 14 and claims 5, 11 and 17 which respectively depend therefrom.

Obviousness Rejection Based on U.S. Patent No. 6,801,515 and U.S. Patent Publication No. 2006/0111121 and NPL XP-001017264

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,801,515 to Ishikawa (“Ishikawa ‘515”) and in view of U.S. Patent Publication No. 2006/0111121 to Ishikawa (“Ishikawa ‘121”) and in further view of Siwko.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); see also MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants’ disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 21 and 22 are improper because

the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Regarding independent claim 21 and claim 22 depending therefrom, Applicant has amended independent claim 21 to include claim limitations not taught or suggested in the cited references.

Generally, Applicant's invention recites "receiving" and "adjusting" "an initial call request block probability" **all at the same entity**, namely at the "mobile station". Specifically, Applicant's amended independent claim 21 recites, in part, "receiving at a mobile station an initial call request block probability ... and **adjusting at the mobile station** said initial call request block probability based on said elapsed time".

In contrast, neither Ishikawa '515 nor Ishikawa '121 teach or suggest giving **adjustment** control to a mobile station. Specifically, the Office Action alleges:

Ishikawa discloses ... adjusting said call request block information (see col. 3, lines 50-62; col. 7, line 55-col. 8, line 6; col. 14, line 11-col. 16, line 54). (Office Action, p. 4; emphasis added).

However, Ishikawa '515 teaches not such thing. Ishikawa '515 clearly teaches that no adjustments to Ishikawa's "call admission information" occur in the mobile station. Specifically, Ishikawa '515 teaches:

... a radio **base station** has means **for broadcasting a call admission information** indicating a state of own station regarding admission of a new call using a broadcast channel, and a **mobile station means for acquiring said call admission information which is broadcast from** a connection target radio **base station** through the broadcast channel and judges admission permission / refusal of said mobile station according to the **acquired call admission information** .... (Ishikawa '515, col. 16, lines 25-30; emphasis added).

According to Ishikawa '515, the "call admission information" is "acquired" from the "base station" and therefore, the mobile station would have no need for "**adjusting at the mobile station** said initial call request block probability based on said elapsed time" as claimed by Applicant.

The Office Action cites Ishikawa '121 for teaching a percentage of calls to be blocked. The Office Action cites Siwko for teaching an elapsed time.

Therefore, since Ishikawa '515 teaches of acquiring "call admission information" from

the base station and Ishikawa '121 and Siwko also do not teach “*adjusting*” occurs in the “*the mobile station*” as claimed by Applicant, these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant’s invention as presently claimed in amended independent claim 21. Accordingly, Applicant respectfully requests the rejection of presently amended independent claim 21 be withdrawn.

The nonobviousness of independent claim 21 precludes rejection of claim 22 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 21 and claim 22 which depends therefrom.

#### **Allowable Subject Matter**

Claim 23 is allowable.

Applicant acknowledges this indication with appreciation

**CONCLUSION**

Claims 1-25 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned representative.

Respectfully submitted,

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